

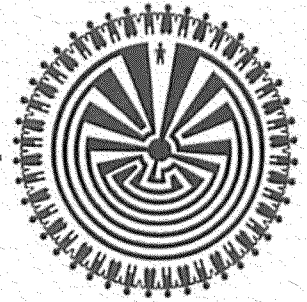
TOHONO O'ODHAM NATION
OFFICE OF THE
CHAIRMAN AND VICE CHAIRMAN

EDWARD D. MANUEL
CHAIRMAN

VERLON M. JOSE
VICE CHAIRMAN

O'ODHAM HA-WE:HEJED

"For the People"



April 21, 2016

Karen R. Driver
Special Assistant to the President for Native American Affairs
Domestic Policy Council, Executive Office of the President
Eisenhower Executive Office Building
1650 Pennsylvania Avenue NW, Room 464
Washington, DC 20501

Dear Ms. Driver,

An April 3, 2016 article in *The New York Times* reported on efforts by native communities in Guatemala to hold the Canadian mining company HudBay Minerals accountable for alleged violent crimes committed by its Guatemalan subsidiary. I have attached a copy of this article for your review. This is only the latest media account of HudBay's disturbing track record, and it raises significant concerns regarding HudBay's proposed Rosemont Copper mine in the Santa Rita Mountains south of Tucson, Arizona.

My tribe, the Tohono O'odham Nation, is adamantly opposed to HudBay's Rosemont Copper project, which would dig a mile-wide, half-mile deep hole on lands held sacred by the Nation. This project would destroy dozens of cultural and archaeological sites of the deepest importance to the Nation, including multiple burial sites of our ancestors. HudBay's Rosemont Copper project would also threaten the habitat of endangered species, including the only known jaguar in the United States, and could potentially contaminate the regional aquifer.

Many of the issues with the Rosemont project have been known for years, but the *New York Times* story raises more concerns about HudBay's record of evading responsibility for the impacts its projects have on indigenous people. I urge you to join the Tohono O'odham Nation and ten other Arizona tribes in opposing the Rosemont Copper project.

I would be happy to answer any questions you may have on the Nation's opposition to this project, and can be reached at 520-383-2028. Thank you for your attention to this important matter.

Sincerely,

Edward D. Manuel, Chairman
Tohono O'odham Nation

Cc: Sally Jewell, U.S. Secretary of the Interior

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New York Times

Guatemalan Women's Claims Put Focus on Canadian Firms' Conduct Abroad

By SUZANNE DALEY APRIL 2, 2016

LOTE OCHO, Guatemala — Her husband was away in the fields, she said, when the truckloads of soldiers, police officers and mining security officials arrived. A half-dozen armed men swarmed into her one-room house, blocking her exit and helping themselves to the meal she had made for her children.

For a long time, the woman, Margarita Caal Caal, did not talk about what happened next that afternoon. None of the women in this tiny village high in the hills of eastern Guatemala did, not even to each other. But that day, Mrs. Caal said, the men who had come to evict her from land they said belonged to a Canadian mining company also took turns raping her. After that, they dragged her from her home and set it ablaze.

“The fear is not over,” she said recently, staring down at her hands while her daughter served coffee to visitors. “I still fear, all the time.”

Mrs. Caal has taken her case to the courts, but not in Guatemala, where Mayan villagers like her, illiterate and living in isolated areas, have had little legal success. She has filed in Canada, where her negligence suit, Caal v. Hudbay Mineral Inc., has sent shivers through the vast Canadian mining, oil and gas industry. More than 50 percent of the world's publicly listed exploration and mining companies had headquarters in Canada in 2013, according to government statistics. Those 1,500 companies had an interest in some 8,000 properties in more than 100 countries around the world.

For decades, overseas subsidiaries have acted as a shield for extractive companies even while human rights advocates say they have chronicled a long history of misbehavior, including environmental damage, the violent submission of protesters and the forced evictions of indigenous people.



Rosa Elbira Coc Ich in Lote Ocho, Guatemala, where she used to live and where, she said, she was among several women gang-raped in 2007. Credit Adriana Zehbrauskas for The New York Times

But Mrs. Caal's negligence claim and those of 10 other women from this village who say they were gang-raped that day in 2007, as well as two other negligence claims against Hudbay, have already passed several significant legal hurdles — suggesting that companies based in Canada could face new scrutiny about their overseas operations in the future. In June, a ruling ordered Hudbay to turn over what Mrs. Caal's lawyers expect will be thousands of pages of internal documents. Hudbay, which was not the owner of the mine at the time of the evictions, denies any wrongdoing.

Canadian law does not provide for huge American-style payoffs, even if the court rules in the plaintiff's favor. But the Hudbay case is being watched carefully because it appears to offer a new legal pathway for those who say they have suffered at the hands of Canadian subsidiaries. A ruling in this case, experts say, could also help establish powerful guidelines for what constitutes acceptable corporate behavior.

"Up until now, we just have not had judicial decisions that help us consider these sorts of relationships," said Sara Seck, an expert on corporate social responsibility at the Faculty of Law, Western University, in London, Ontario. "For once, the court is going to look at what really happened here, and that is important."



The Fenix nickel mine in El Estor, a town near Lote Ocho. Credit Adriana Zehbrauskas for The New York Times

The behavior of multinational companies working in poor countries has come under increasing fire in recent years. Social expectations have changed, experts say, with many citizens of rich countries demanding that corporations be more responsible in the countries where they operate.

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In Canada, efforts to define a code of good behavior for extractive corporations are longstanding, if so far unsuccessful. Many mining companies are based there because Canada offers a concentration of expertise in mining finance and law, and the government offers incentives including tax breaks.

A bill that would have created an ombudsman to investigate complaints and deny access to government loans — and even consular services — to companies accused of behaving poorly failed by a narrow margin in 2010 after facing fierce opposition from the extractive industry.

John McKay, a member of Parliament from the Liberal Party who sponsored that bill, said he expected Canada's new government to try again soon.

"There are companies out there doing things that they would never do in their own countries," he said.

In a 2014 report, the Council on Hemispheric Affairs, a policy group in Washington, concluded that Canadian companies, accounting for 50 percent to 70 percent of the mining in Latin America, were often associated with extensive damage to the environment, from erosion and sedimentation to groundwater and river contamination. Of particular note, it said, was that the industry "demonstrated a disregard for registered nature reserves and protected zones."

At the same time, the report said, local people were being injured, arrested or, in some cases, killed for protesting.



Angelica Choc, at the grave of her husband, Adolfo Ich Chamán, in El Estor. Mr. Ich was killed during a demonstration against mining in 2009. Credit Adriana Zehbrauskas for The New York Times

Victims, however, have had little success gaining access to Canadian courts. Their lawyers have often tried to get cases heard on the basis of violations of human rights or international criminal law. But most were told that Canada had no jurisdiction, and that their claims would be more appropriately heard in the country where the events took place, even if that country's courts were notoriously corrupt or otherwise dysfunctional.

The lawyers for the plaintiffs in the Huidbay case, Murray Klippenstein and Cory Wanless, took a novel approach, however, making a simpler claim. They said the Canadian parent company was negligent for failing to put an effective monitoring system in place to understand what its Guatemalan subsidiary was doing. Framing the claim in this way allowed the plaintiffs to draw a clear connection between the negligence and Canada.

In addition to the claims brought by Mrs. Caal and the other women who say they were raped in Lote Ocho, Huidbay, based in Toronto, is facing claims over the death of a prominent local leader, Adolfo Ich Chamán, 50, and the shooting and paralysis of a bystander, German Chub, 28, during demonstrations against mining in the nearby town of El Estor in 2009.



German Chub, 28, was shot during mining protests in 2009, leaving him paralyzed from the waist down. Credit Adriana Zehbrauskas for The New York Times

Huidbay lawyers moved to have the case dismissed both because of jurisdictional grounds and because it was “plain and obvious” that the claims would fail. Before the ruling on jurisdiction, they dropped that claim and went forward with the other one. In July 2013, however, the judge ruled it was not obvious that the claims were without merit.

Turning to the courts has not been easy for the plaintiffs, most of whom speak only Q’eqchi’, a Mayan language, have had little or no schooling, and find the prospect of going to Canada terrifying. In addition, they face animosity from a sizable portion of the local population, particularly in El Estor, where there is a giant nickel processing plant.

Hudbay officials dispute most of the plaintiffs' claims. They say that no mining security officials were present during the Lote Ocho evictions and that no rapes took place. The company's website also points out that at the time, Hudbay had nothing to do with the mine. It was owned by Compañía Guatemalteca de Níquel, a subsidiary of another Canadian company, Skye Resources Inc., which Hudbay bought in 2008, assuming its liabilities. Hudbay has since sold the mine.



Children played on a truck in Lote Ocho. The community consists of about a dozen flimsy wooden houses, home to about 100 people, most of them children. Credit Adriana Zehbrauskas for The New York Times

Hudbay officials also maintain that there was no negligence in 2009 when it did own the mine. Officials say the killing of Mr. Ich, a teacher, and the shooting of Mr. Chub, a farmer, took place as the mine's security guards were defending themselves from armed protesters.

But some recent events appear to lend credence to the plaintiffs' claims. The head of the mine's security during the 2007 evictions and the 2009 shootings, a former army colonel named Mynor Padilla, is now on trial in Guatemala over the shooting of Mr. Ich and Mr. Chub.

Moreover, an army officer and a paramilitary officer were convicted in February of raping and enslaving indigenous women in the 1980s, during Guatemala's long civil war, suggesting, some advocates say, that such behavior has long been entrenched in this country. During the war between the United States-backed government and leftist rebels, the indigenous population in this region was repeatedly attacked for trying to make land claims.

Even now, the local Q'eqchi' population believes much of the land in the area belongs to it, and not to the mining company.

At the time of Mrs. Caal's eviction, there was no mining anywhere near Lote Ocho, but mining officials moved to evict the villagers anyway. The community is made up of about a dozen scattered, flimsy wooden houses, home to about 100 people, most of them children.

There is no electricity here or a school for the children. The village is a bumpy 45-minute ride in a pickup truck uphill from the nearest town. But that costs money, so most of the villagers walk there using a footpath, which takes about two hours.

Mrs. Caal said the armed men who attacked her during the eviction were so brutal with her that she could not get up from the spot where they had left her. But when her husband asked what had happened to her, she told him only that she had fallen, afraid of how he might react.

It is still a subject she turns to reluctantly.

"Remembering is reliving," Mrs. Caal said. "It hurts. It hurts as a woman."

A version of this article appears in print on April 3, 2016, on page A1 of the New York edition with the headline: Outcry Echoes Up to Canada